

CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP

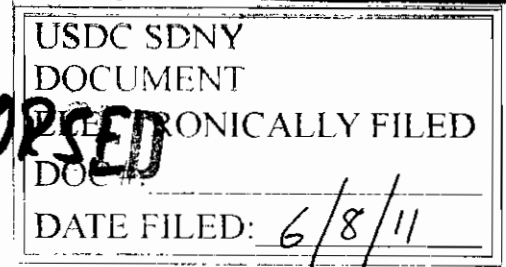
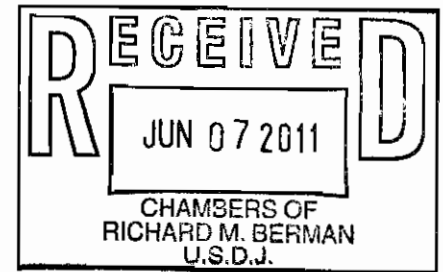
Joseph "Jay" Wheeler (1947 - 2008)
Co-Founder

June 7, 2011

BY HAND DELIVERY

Honorable Richard M. Berman
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, New York 10007-1312

**MEMO ENDORSED
P3**



Re: *In re Herald, Primeo and Thema Funds Securities Litigation*,
No. 09 Civ. 0289 (RMB) (S.D.N.Y.)

Dear Judge Berman:

On behalf of Lead Plaintiff Neville Seymour Davis, we write to inform you that today Mr. Davis and Defendants HSBC Holdings plc, HSBC Securities Services (Ireland) Limited, and HSBC Institutional Trust Services (Ireland) Limited, and HSBC Bank USA, N.A. (collectively, the "HSBC Defendants") have executed a Stipulation and Agreement of Partial Settlement (the "Settlement"). Subject to court approval, the Settlement upon becoming effective will fully resolve and release all class claims against the HSBC Defendants in exchange for a payment of \$62.5 million.

Accordingly, we write pursuant to Your Honor's Individual Practices to request a pre-motion conference for Mr. Davis's Unopposed Motion for Preliminary Approval of Partial Settlement (the "Preliminary Approval Motion"). Copies of the motion and all exhibits, including the Settlement, are enclosed. We respectfully request that the pre-motion conference be held tomorrow, June 8, 2011, together with the conference on Repex Ventures, S.A.'s anticipated consolidation motion, because these anticipated motions raise overlapping issues

Honorable Richard M. Berman
June 7, 2011
Page 2

relating to the standing of Irving H. Picard, the trustee appointed for the liquidation of the Bernard L. Madoff Investment Securities LLC (the "Trustee").

As Your Honor knows, the Honorable Jed S. Rakoff is presiding over both Mr. Davis's motion to withdraw the Trustee's injunction action against Mr. Davis and the HSBC Defendant's motion to dismiss the Trustee's action against them. *See Picard v. Repex Ventures, S.A.*, No. 11 Civ. 3477 (JSR) (S.D.N.Y.); *Picard v. HSBC Bank plc*, No. 11 Civ. 0763 (JSR) (S.D.N.Y.). With the support of the HSBC Defendants, we request that Your Honor consider transferring Mr. Davis's anticipated Preliminary Approval Motion and subsequent matters pertaining to the Settlement to Judge Rakoff under Rules 13 and 14 of the Rules for the Division of Business Among District Judges.

Both actions pending before Judge Rakoff implicate whether the Trustee has standing to bring claims on behalf of Madoff investors. The Trustee purports to have exclusive standing, seeks to enjoin Mr. Davis's action on behalf of Thema investors and declare his complaint void *ab initio*, and specifically threatens to sue Mr. Davis for any amounts recovered from the HSBC Defendants on behalf of Thema investors.¹ By contrast, the Settlement is expressly conditioned on a ruling that the Trustee has no such standing nor any claim to settlement proceeds obtained for Thema investors. *See* Exhibit A (Paragraph 5.2 of the Settlement). Judge Rakoff is expected to rule on the standing question following oral argument scheduled for June 23, 2011 on the HSBC Defendants' pending motion to dismiss. Thus, the Settlement and the Preliminary Approval Motion are intertwined with the actions before Judge Rakoff.

¹ *See Picard v. Repex Ventures, S.A.*, Adv. Pro. No. 11-01727 (BRL) (Bankr. S.D.N.Y.), Dkt. No. 4, Trustee's Memo. of Law in Support of Mot. for Injunctive and Related Relief, at 30 ("enjoining the Class Actions would obviate the need for *future proceedings by the Trustee to recover Customer Property from the Class Action Plaintiffs that they succeed in recovering from the HSBC Defendants*") (emphasis added).

Honorable Richard M. Berman

June 7, 2011

Page 3

Therefore, we respectfully request that Your Honor schedule a pre-motion conference on the Preliminary Approval Motion for June 8, 2011, and thereafter consider transferring the motion to Judge Rakoff as related to *Picard v. Repex Ventures, S.A.*, No. 11 Civ. 3477 (JSR) (S.D.N.Y.), and *Picard v. HSBC Bank plc*, No. 11 Civ. 763 (JSR) (S.D.N.Y.).

Copies of this letter have been delivered to all counsel of record, to counsel for the Trustee, and to Judge Rakoff's chambers (subject to his permission).

Respectfully yours,

Francis A. Bottini, Jr. /ajc

Francis A. Bottini, Jr.

of CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP

Enclosures

cc: Chambers of the Honorable Jed S. Rakoff (by hand)
All counsel of record (by e-mail)

<i>No need for transfer. We</i>	
<i>can discuss at today's</i>	
<i>conference.</i>	
SO ORDERED:	<i>Richard M. Berman</i>
Date: <i>6/8/11</i>	
Richard M. Berman, U.S.D.J.	